

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, ) MM Docket No. 04-20  
FM Broadcast Stations ) RM-10842  
(Cambridge and St. Michaels, Maryland) )

To: The Secretary

RECEIVED  
DEC 27 2004  
Federal Communications Commission  
Office of Secretary

REPLY COMMENTS

**CWA BROADCASTING, INC.**

Barry A. Friedman  
Thompson Hine LLP  
1920 N. Street, N.W.  
Washington, D.C. 20036  
(202) 331-8800  
Its Attorney

Dated: December 27, 2004

No. of Copies rec'd at 4  
List ABCDE

## TABLE OF CONTENTS

	Page
Table of Contents	i
Summary	ii
NEITHER STOCKTON NOR NEWARK QUALIFY AS A COMMUNITY FOR ALLOTMENT PURPOSES	2
THE PUOPOLO COUNTERPROPOSAL MUST ALSO BE DISMISSED	9
THE SECTION 307(b) ANALYSIS FAVORS CWA	9
CONCLUSION	12

## SUMMARY

In these Reply Comments, CWA Broadcasting, Inc., licensee of WINX-FM, Cambridge, Maryland, shows that the Commission should reject the Counterproposals put forward by Route 12 Community Broadcasters, MTS Broadcasting, L.C., and Dana J. Puopolo, and grant CWA's proposal to modify WINX's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland and upgrade its operation to Class B-1 on Channel 232. Route 12's Counterproposal to allot Channel 232A to Stockton, Maryland fails because Stockton is not a community for allotment purposes under the Commission's standards. The Stockton Proposal also fails on technical grounds – its proposed facility is short-spaced to WINX's licensed facility in violation of Commission policy. MTS's proposal to allot Channel 233A to Newark, Maryland fails because Newark is not a community for allotment purposes under the Commission's standards. As for Puopolo's Counterproposal for Chincoteague, Virginia, it is not even mutually exclusive with CWA's Proposal.

Finally, CWA's Proposal does not violate the Commission's policy against removing a community's sole local service, as the St. Michael's station has never been built. CWA's proposal is clearly in line with Commission precedent holding that the removal of an unbuilt station from a community does not represent a loss of service. Accordingly, the Commission should dismiss Route 12's Stockton Counterproposal and MTS's Newark Counterproposal and grant CWA's Cambridge Proposal, while initiating a separate proceeding to deal with Puopolo's Chincoteague proposal.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 04-20
FM Broadcast Stations	)	RM-10842
(Cambridge and St. Michaels, Maryland)	)	

To: The Secretary

**REPLY COMMENTS**

CWA Broadcasting, Inc. ("CWA"), the licensee of Station WINX-FM, Cambridge, Maryland (the "Station" or "WINX"), by its attorneys and pursuant to *Public Notice*, Report No. 2685, released December 9, 2004, hereby submits these Reply Comments in the above-referenced proceeding in which CWA seeks to modify the Station's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland and upgrade its operation to Class B1 on Channel 232 ("CWA Cambridge Proposal"). CWA submits that the Counterproposals put forward by MTS Broadcasting, L.C. ("MTS"), Route 12 Community Broadcasters ("Route 12"), and Dana J. Puopolo ("Puopolo") are all flawed by procedural or substantive defects and must be excluded from the ultimate decision in this proceeding. In support thereof, CWA states as follows.

1. CWA has previously discussed the impact of each of these Counterproposals. In its Reply Comments, submitted on April 20, 2004, CWA evidenced the procedural and substantive errors attendant to the Counterproposals. In doing so, CWA established that the Commission should change the community of license for Station WINX-FM, from St. Michaels, Maryland to

Cambridge, Maryland, and modify its operations from Class A to Class B-1. The Counterproposals in this proceeding propose that Class A allotments be made, instead, at Stockton, Maryland on Channel 232A or Newark, Maryland or Chincoteague, Virginia on Channel 233A. These proposals fail either because they would require the impermissible modification of WINX's facilities, the proposed community of license does not meet Commission standards to qualify as such, or the proposal is not mutually exclusive with CWA's Petition as required by Commission Rules.<sup>1</sup> Application of one or more of these provisions requires them to be disregarded.

**NEITHER STOCKTON NOR NEWARK QUALIFY AS A COMMUNITY FOR ALLOTMENT PURPOSES**

2. In their Counterproposals, MTS proposes the allotment of Channel 233A to Newark, Maryland ("MTS Newark Counterproposal"), and Route 12 proposes the allotment of Channel 232A to Stockton, Maryland ("Route 12 Stockton Counterproposal"). Neither Newark nor Stockton qualifies as a community for allotment purposes under the Commission's standards and the Commission should reject both Counterproposals on this ground alone. The MTS Newark Counterproposal and the Route 12 Stockton Counterproposal both premise community status upon the fact that their respective communities are Census Designated Places ("CDP"). Under Commission precedent, designation of an area as a CDP (or if the area is incorporated) only provides the presumption that the area constitutes a community for allotment purposes ("CDP Presumption"), but does not require the Commission to treat it as having community status. *See Grants and Peralta, New Mexico*, 14 FCC Rcd 21446, 21449 (MMB 1999). The CDP Presumption may be rebutted, however, upon showing that, despite an area's CDP status, it does

---

<sup>1</sup> *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

not possess the social, economic, or cultural characteristics that inform the Commission's definition of a "community" for allotment purposes. *See id.*; *Stock Island, Florida*, 8 FCC Rcd 343 (MMB 1993); *East Hemet, California et al.*, 4 FCC Rcd 7895 (MMB 1989). Applying relevant Commission precedent, neither Stockton nor Newark possess the characteristics the Commission associates with a bona fide community, and, thus, neither the Route 12 Stockton Counterproposal nor the MTS Stockton Counterproposal is entitled to the CDP Presumption. Given that neither counterproposal posits a viable community, both must be rejected.

3. In *Grants and Peralta, New Mexico, supra*, the Bureau relied on the following factors, which, taken together, outweighed the presumption of community-status afforded by Peralta, New Mexico's listing as a CDP, as well as the fact that Peralta had a population of 3,182 persons, its own zip code, a listed post office, volunteer fire department, and numerous local establishments:

- While Peralta had its own zip code, it did not have its own independent post office (despite petitioner's claim to the contrary);
- Peralta did not have its own school system or hospital;
- Despite the presence of businesses (and a church) with "Peralta" in their names, the vast majority of residents worked outside of the area, suggesting that these establishments did not serve a self-contained population identifying itself with Peralta;
- Peralta had no local government or elected officials, offered no municipal services, had no local media, and no civic or social organizations; and
- Peralta had no separate listing for Peralta residents and businesses in the telephone book.

*See* 14 FCC Rcd at 21449. Given the absence of these important signs of an independent, identifiable community, the Bureau concluded that Peralta was not a community for allotment purposes and denied petitioner's rulemaking request. *See also Stock Island, Florida, supra*

(rejecting Stock Island as a community despite its CDP status and presence of volunteer fire department, businessman's association, and neighborhood improvement program, because petitioner failed to demonstrate that any of the business, political, social or commercial organizations identified themselves with Stock Island); *East Hemet, California, et al., supra* (rejecting East Hemet as a community because petitioner failed to demonstrate that East Hemet had the social, economic or cultural indicia qualifying it as a community for allotment purposes).

4. In the instant proceeding, Stockton, Maryland, like Peralta, New Mexico, lacks the social, economic and cultural indicia that qualify an area as a community for allotment purposes. According to Route 12, Stockton, a non-incorporated CDP with a Census 2000 population of 143 persons, has a separate zip code, a post office, a volunteer fire department, and some churches and businesses. However, this evidence on its own fails to establish the existence of a community for allotment purposes. *See Grants and Peralta, New Mexico, supra* (rejecting Peralta as a community notwithstanding that it had its own zip code, post office, volunteer fire department, and local establishments). Route 12 fails to show that any of the establishments it lists actually identify themselves specifically with Stockton, or that Stockton in any way has a geographically identifiable population grouping. Among the establishments listed by Route 12, only two (the Stockton Volunteer Fire Department and the Stockton Sportsmen Club) even have Stockton in their name. This is virtually the only evidence offered by Route 12 to suggest that any of these establishments identify themselves with Stockton, and, as Commission precedent demonstrates, inclusion of the name of the alleged community in the name of a local establishment does not suffice on its own to show the presence of a community for allotment purposes. *See Grants and Peralta, New Mexico, supra*. While Route 12 attributes a post office to Stockton, it fails to demonstrate that this post office is unique to, serves, or identifies

specifically with, Stockton. In any case, the Commission has held that the mere presence of a post office is not enough to demonstrate the existence of a bona fide community. *See Rockport, Texas et al.*, 4 FCC Rcd 8075, 8076 (MMB 1989) (fact that Armstrong, Texas had its own post office not enough to establish Armstrong as a community).

5. Further, Route 12 fails to demonstrate where these establishments are located, other than listing street addresses. No map is provided to show exactly where the establishments are to be found. Given that Stockton is unincorporated, Route 12 bears the burden of demonstrating that these establishments are actually located in the CDP and identify with the designated area. For example, Route 12 lists the location of St. John's Holy Church as Saint John's Road. This description fails to suggest in any way that this church is located in the Stockton "community," and that it specifically identifies itself with Stockton or that the residents of Stockton view the church as an integral part of the Stockton "community." Instead, this description suggests that the church serves a rural population that does not specifically identify itself with a particular community. The evidence presented by Route 12 to show that Stockton is a community instead demonstrates that it is an "expanded rural area" without the social, economic, or cultural indicia warranting an allotment. *See Broadview, Montana*, 14 FCC Rcd 14101 (MMB 1999) (rejecting Broadview as a community where petitioner failed to demonstrate that listed establishments were "intended to serve Broadview, as opposed to an expanded rural area"). A number of the "establishments" cited by Route 12 appear to consist in a business operated out of or associated with a personal residence. Calls placed to the telephone numbers provided by Route 12 revealed that the Fireplace Supply Co. consists of a showroom in the back of a personal residence, and the voicemail for Ayres Seafood, Hair Loft, and DTK Landscaping & Property Maintenance consisted of a personal residence message. *Broadview, Montana, supra*; *Gaviota, California*, 16



FCC Rcd 1518, 1522 (MMB 2000) (rejecting Gaviota as a community where petitioner failed to demonstrate nexus between establishments and the community in question).

6. Indeed, the absence of relevant evidence demonstrates that Stockton is not a community as defined by the Commission. As in *Grants and Peralta, New Mexico*, Stockton has no school system or hospital, no local government or elected officials, no local media and no civic or social organizations, and it offers no municipal services. Stockton does not have its own listing in the local phonebook. And, significantly, most residents work outside the area. *Grants and Peralta, New Mexico, supra*; *Danville and Nonesuch, Kentucky*, 18 FCC Rcd 9304, 9306 (MMB 2003). Finally, the Commission has advised that a key criterion for determining community status are affidavits from local residents that view the “community” as “a center for shopping and medical services,” which Route 12 has made no effort whatsoever to offer. *Evergreen, Montana*, 15 FCC Rcd 9148 (MMB 2000). Stockton clearly lacks the social, economic, and cultural attributes that define a community. Stockton’s CDP status is rebutted by the complete absence of “community” characteristics, the fact that only 143 persons reside in the CDP, and the absence of any evidence that local residents consider Stockton as a center for services to them. The Route 12 Stockton Counterproposal should therefore be rejected. See *Pike Road and Ramer, Alabama*, 10 FCC Rcd 10347 (MMB 1995).

7. Even assuming, *arguendo*, that the Commission finds that Stockton has the requisite community status, the Route 12 Stockton Counterproposal is fatally flawed, from an engineering perspective, and must be denied. The Route 12 Stockton Counterproposal must be rejected because the facility proposed therein is short-spaced to the licensed WINX facility. Given this short-spacing, implementation of the Route 12 Stockton Counterproposal would require the Commission to order CWA to relocate its transmitter site to a new site. Aside from the sheer

impracticality of this, it violates Commission precedent. The Commission “refrain[s] from requiring a transmitter site change by an unwilling licensee or permittee.” *Rockport, Texas et al.*, *supra*. See also *Arlington, Oregon, et al.*, 19 FCC Rcd 12803, 12809 (MB 2004). The fact that Route 12’s proposed facility is short-spaced to the licensed WINX facility stands as further reason for the Commission to reject the Route 12 Stockton Counterproposal in the instant proceeding.<sup>2</sup>

8. Newark, Maryland equally lacks the social, economic and cultural elements that comprise a community. According to MTS, Newark, a non-incorporated CDP with a Census 2000 population of 339, has its own zip code, post office, a couple of churches and a few businesses. However, as stated above, these attributes, even if proven correct, are not enough to qualify an area as a community for allotment purposes. See *Grants and Peralta, New Mexico*, *supra*; *Rockport, Texas et al.*, *supra*. And MTS in no way demonstrates that the establishments located in Newark identify themselves with Newark per se, or otherwise indicate the existence of a community for allotment purposes. and has offered no evidence from local residents that Newark serves as a community for their shopping and medical services. As regards Newark’s post office, the evidence presented by CWA is that the postal facility is regional in nature serving homes and commercial patrons in the Newark CDP and elsewhere. There is no indication that this post office box independently serves or otherwise identifies with Newark, and, assuming *arguendo* that it does, this is far from dispositive. See *Rockport, Texas et al.*, *supra*. As for the Newark Volunteer Fire Department, the evidence provided by MTS shows that it is staffed primarily by individuals living outside of Newark and serves an area of 50 square miles, well beyond the contours of the CDP. This hardly serves as evidence of Newark’s status as a self-

---

<sup>2</sup> The Route 12 Stockton Counterproposal may be considered in connection with the Puopolo Chincoteague Proposal, but not CWA’s proposal.

contained, independent community. *See Broadview, Montana, supra.* None of the establishments cited by MTS, including the churches, contain Newark in their name save one – Newark Station – which is no more than a gas station with an associated small convenience store that also provides prepared foods. The solid waste site cited by MTS is called Worcester County Solid Waste,<sup>3</sup> and the school cited by MTS is called Worcester Career & Tech Center – both entities are operated by Worcester County and serve the County at large rather than Newark itself.

8. Like Route 12, MTS fails to provide any map demonstrating that these establishments are actually located in, and identify with, the CDP. Further, Newark has no school system or hospital, no local government or elected officials, no local media and no civic or social organizations, and it offers no municipal services. Newark does not have its own listing in the local phonebook. And, significantly, most residents work outside the area. *Grants and Peralta, New Mexico, supra; Danville and Nonesuch, Kentucky, supra.* Newark's lack of the important social, economic, and cultural attributes that define a community, together with the absence of any local community affidavits in support of a connection between Newark and their service needs, rebuts its status as a CDP. The MTS Newark Counterproposal should therefore be rejected on grounds that Newark does not qualify as a community for allotment purposes.<sup>4</sup>

---

<sup>3</sup> One would be hard pressed to consider a garbage dump an indicator of community status.

<sup>4</sup> The cases cited by MTS in support of its Counterproposal are unavailing. In *Encino, Texas*, 18 FCC Rcd 23984 (MB 2003), petitioner demonstrated community status through the presence of an elementary school, volunteer fire department, post office, churches, and numerous businesses whose nexus to Encino was not disputed. In *Marathon and Mertzon, Texas*, 18 FCC Rcd 23986 (MB 2003), petitioner demonstrated community status through the presence of local elementary and high schools, a public library, churches, a bank, restaurants, a law office, a health center and numerous other businesses whose nexus to Marathon was not disputed. In the instant matter, CWA has shown that the supposed economic, social, and cultural ties between Newark and the few organizations listed by MTS are specious.

## **THE PUOPOLO COUNTERPROSAL MUST ALSO BE DISMISSED**

9. Turning to the Puopolo Counterproposal, it is procedurally defective. Puopolo is an individual and is required, by Section 1.52 of the Commission's rules, to provide a sworn verification of his pleading. No such sworn verification is provided. Puopolo attempts to make an unsworn verification, which fails to meet the requirements of Section 1.16 of the Commission's Rules. Accordingly, his Counterproposal must be dismissed. *Lincoln, Osage Beach, Steelville, and Warsaw, Missouri*, 17 FCC Rcd 6119, 6122 (2002).

10. Even assuming, *arguendo*, that the Puopolo Counterproposal should be considered, it, too, fails. The Puopolo Chincoteague Proposal is not mutually exclusive with the Cambridge Proposal and should not be considered on a comparative basis with it. *Ozona and Iraan, Texas*, 18 FCC Rcd 444, 444-445 (MB 2003). Rather, it is mutually exclusive with both the Route 12 Stockton Counterproposal and the MTS Newark Counterproposal. Thus, if the Commission were to consider Newark a valid community, the Newark Counterproposal would need to be weighed against the Chincoteague Proposal and the CWA Cambridge Proposal, but not the Stockton Proposal, since that cannot be granted, as noted above. *See* 47 C.F.R. § 1.421. CWA will discuss these considerations below.

## **THE SECTION 307(b) ANALYSIS FAVORS CWA**

11. CWA recognizes that the Commission's radio allotment priorities apply here. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982). In this case, that means whether the Commission should, on the one hand, allot a new FM channel to a non-incorporated CDP with a total population of 339, or, on the other hand, permit the third transmission service at Cambridge, Maryland,<sup>5</sup> and, perhaps, the second transmission service at

---

<sup>5</sup> Cambridge's 2000 Census population is 10,911.

Chincoteague, Virginia. CWA submits that Section 307(b) and the public interest are best served by the latter use of the broadcast spectrum.

12. Initially, CWA wishes to rebut an erroneous argument made by MTS in its Reply Comments. MTS claims that the public interest analysis should be premised on WINX-FM's existing service contours, rather than as a Channel 232B1 allotment at Cambridge. This is incorrect. The Commission has made clear that, in cases involving modifications under Section 1.420(i), such as this one, it relies on predicted contours that are themselves based on the maximum facilities of the allotment and not on the current operation of the Station. *Wallace, Idaho, and Bigfork, Montana*, supra. *Greenup, Kentucky and Athens, Ohio*, 6 FCC Rcd 1493, 1495 (1991).

13. There are significant public interest benefits that accrue to CWA's proposal. As indicated in the attached Engineering Statement of the consulting firm of Cavell, Mertz & Davis, Inc. (Exhibit A), CWA will produce a net gain in service of 2,236 square kilometers and 99,186 persons. Included in this gain in service is service to underserved areas and populations. Exhibit A shows that the total underserved gain area consists of 1,484 square kilometers and 57,339 persons. This consists of: (a) a second reception service to 1,106 persons in 276 square kilometers, (b) a third reception service to 4,536 persons in 283 square kilometers, (c) a fourth reception service to 3,915 persons in 283 square kilometers, and (d) a fifth reception service to 47,782 persons in 642 square kilometers. Finally, as noted in Exhibit A, the proposed change in the allotment will result in service by the Station to 168,095 persons in 2,744 square kilometers of land area. The proposed Newark allotment would only result in service to 92,396 persons in 1,846 square kilometers of land area. Thus, CWA's proposal will provide service to 182% more people and 149% more land area than MTS's Newark Counterproposal.

14. To the benefit of the public interest must be added that the grant of the CWA request would allow the allotment of a second FM channel to Chincoteague, which would not be possible under MTS's Counterproposal.<sup>6</sup> This means that a grant of the CWA/Puopolo proposals represent the best use of the spectrum through the provision of service to the underserved and greater populations by one station and the initiation of service by another, a far better use of the broadcast spectrum than what is offered by MTS.

15. Considering these factors, it is obvious that CWA's proposal best serves the goals of the FM Allotment priorities. Under Priority (2), CWA will provide service to more area and population than exist in the small unincorporated CDP that MTS seeks to serve. To this benefit are the underserved residents who would gain from the allotment change as well as the overall greater service. Finally, CWA's proposal would also allow another channel to be added at Chincoteague or elsewhere. Without a doubt, these gains in service well outweigh the addition of a first transmission service to a rural crossroads with 332 residents.

16. Even if this is not enough to result in the CWA Cambridge Proposal being granted, CWA has determined, as shown in Exhibit A, that the Commission can grant the request and still have a channel to award among the Counterproposers and others. CWA submits that FM Channel 235A is available for allotment to Newark or Stockton, depending on whether these are communities for allotment purposes and which is preferred under the Section 307(b) proposal. CWA further submits that the Commission should undertake further rulemaking proceedings to seek public comment on the best allotment of channels among the communities proposed by the

---

<sup>6</sup> As the Puopolo Counterproposal is not mutually exclusive with CWA's, the Commission should consider issued a supplemental notice of proposed rulemaking to elicit comments on whether a Chincoteague or other mutually exclusive allotment to it would best serve the public interest. CWA submits that the Section 307(b) analysis favors CWA whether or not the Puopolo Counterproposal is considered or treated as part of a supplemental proceeding.

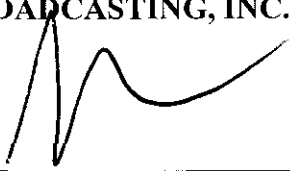
Counterproposers. However, this should not prevent the CWA Cambridge Proposal from going forward.

### **CONCLUSION**

17. CWA submits that the Route 12 Stockton Counterproposal and the MTS Newark Counterproposal should be dismissed on grounds that neither Stockton nor Newark qualifies as a community for allotment purposes. In the absence of any valid Counterproposals, the CWA Cambridge Proposal should be granted for the reasons identified in CWA's Petition for Rulemaking and in the *NPRM*. Even assuming that the proposals must all be considered, along with the Chincoteague Counterproposal, it is patently clear that CWA's proposal best serves the public interest through the greater reception service that it, along with a Chincoteague or proposal mutually exclusive to it, can provide.

Respectfully submitted,

**CWA BROADCASTING, INC.**

By:   
Barry A. Friedman, Esq.  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 331-8800

December 27, 2004

## EXHIBIT A



Engineering Statement  
**AREAS and POPULATIONS SERVED**  
prepared for  
**CWA Broadcasting, Inc.**  
WINX-FM Ch. 232B1 Cambridge, MD Facility No. 14774

**Introduction**

This Engineering Statement has been prepared on behalf of *CWA Broadcasting, Inc.* (“*CWA*”) licensee of FM radio station WINX-FM, Channel 232A, which is licensed to Cambridge, MD, but whose channel is allotted to St. Michaels, MD (File Numbers BLH-19990715KB and BRH-20030530ADC). This Statement has been prepared in support of *CWA*’s attempt to rectify this long-standing peculiarity, as well as to request an upgrade from Class A to Class B1. This statement is also presented in response to the Public Notice (Report No. 2685) wherein which counter-proposals are considered to the CWA proposal (specifically, the Chincoteague, Maryland (RM 11128), (“*Chincoteague*”), Newark, Maryland (RM 11129), (“*Newark*”), and Stockton, Maryland (RM 11130), (“*Stockton*”) petitions).

As shown by the instant engineering statement, *CWA*’s proposed upgrade of WINX-FM complies with the FCC Rules and policies and also represents a preferable arrangement of allotments.

A comparison of the standard 1 mV/m (60 dBμ) contours from the authorized and proposed Channel 232 facilities shows that the proposed modification will result in certain “gains” and “losses” in area and population. This comparison is graphically depicted in the attached **Figure 1**. As shown, the 1 mV/m contour for the licensed WINX-FM facility encompasses 377.9 square km of *land* area and 68,909 persons. Under the proposed upgrade, the 1 mV/m contour will increase to encompass 2,724 square km of land area and 168,095 persons. This increase represents 620 percent of the area and 144 percent of the population within the WINX-FM licensed 1 mV/m contour.

**Service Gain and Loss Area**

A study was conducted to quantify the number of “other” existing full time aural facilities that provide service to the subject “gain” and “loss” areas created under the CWA proposal. Specifically, the locations of other FM stations’ 1 mV/m contours and AM stations’ night time

Engineering Statement  
**AREAS and POPULATIONS SERVED**  
(Page 2 of 3)

interference-free contours<sup>1</sup> were determined using the standard prediction methods specified in the Commission's Rules. Of the 10,168 persons in the loss area, 9,729 (95.7 percent) are within the 1 mV/m contour of at least 5 other full-time services. The remaining 439 persons (4.3 percent) are within the 1 mV contour of at least 4 other services. None of the loss area would receive less than 4 other full-time services.

Within the gain area, the CWA proposal would add a second service to 1,106 persons (gray area), add a third service to 4,536 persons, a fourth service to 3,915 persons, and a fifth service to 47,782 persons. The attached **Table I** provides a summary of the gain and loss information.

**Other Proposals - Review**

By way of review, three other proposals are competing to some degree with the *CWA* proposal, with the exception of *Chincoteague*. The *Chincoteague* proposal (as a Class A on Channel 233) is fully spaced to both the currently licensed and the proposed Class B1 WINX-FM facilities. The *Newark* proposal is mutually exclusive to only the Class B1 upgrade to WINX. The *Stockton* proposal is mutually exclusive to both the currently licensed WINX-FM facility and the Class B1 upgrade due to its co-channel status. All three proposals are mutually exclusive to each other.

**"Gain" Area - Other Proposals**

For analysis of the three other proposals, the coordinates for each were acquired from the FCC's Consolidated Database (CDBS), and radius contours were generated using the maximum Class A distance of 28.3 km for the 1 mV/m contour. A summary of the counter proposals is provided in **Table II**. As shown, the *Newark* proposal's hypothetical service contour encompassed the greatest population, but its entire population is already well served with at least 5 full-time services. The *Chincoteague* proposal encompasses the least population, but includes the greatest underserved population (2,440 with 4 services) of the three competing proposals. The *Stockton*

---

<sup>1</sup>For FM, the predicted 1 mV/m contour of each area authorized facility was utilized while for vacant or unbuilt facilities a class maximum radius was assumed. For AM stations, the nighttime interference free contour (RSS) for each station was assumed as a basis for the "full time" service contour.

Engineering Statement  
**AREAS and POPULATIONS SERVED**  
(Page 3 of 3)

proposal has a small population of 483 persons who receive 4 services, but involves the same underserved population in common with *Chincoteague* due to its proximity to that proposal.

**Alternate Channel Option for Newark**

A spacing study was performed to see if there may be an alternative channel which may be utilized for either the *Newark* or *Stockton* proposals. Nothing presented itself for service in Stockton, but a hypothetical fully spaced site exists near Newark on Channel 235A which would require a southern site restriction at 38° 12' 20" N and 75° 17' 15" W.

**Conclusion**

The areas and populations served by all proponents in Docket No. 04-20 have been evaluated in accordance with relevant FCC policies and Rules. The data set forth herein was developed using neutral methods which are designed to minimize random, human errors.

**Qualifications**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Clinton is a senior engineer in the firm of *Cavell, Mertz & Davis, Inc.*

Robert J. Clinton  
December 23, 2004

Cavell, Mertz & Davis, Inc.  
7839 Ashton Avenue  
Manassas, VA 20109  
(703) 392-9090

**List of Attachments:**

Figure 1	FM Contour Comparison
Table I	WINX-FM Class B1 Gain-Loss Summary
Table II	Other Proposals Gain Summary

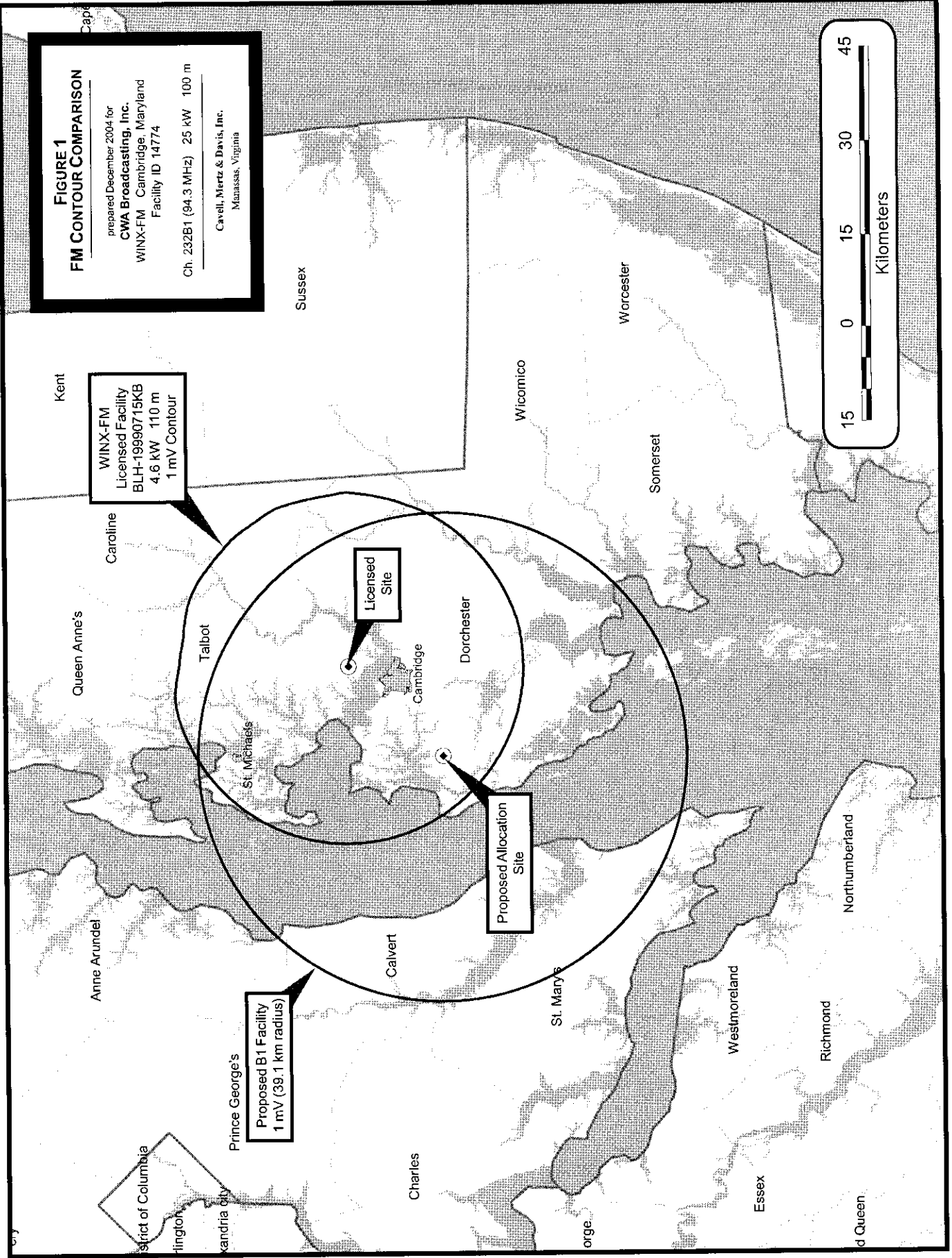
**Cavell, Mertz & Davis, Inc.**

# **FIGURE 1** **FM CONTOUR COMPARISON**

prepared December 2004 for  
**CWA Broadcasting, Inc.**  
WINX-FM Cambridge, Maryland  
Facility ID 14774

Ch. 232B1 (94.3 MHz) 25 kW 100 m

Cavell, Mertz & Davis, Inc.  
Manassas, Virginia



**Table I**  
**WINX-FM CLASS B1 GAIN-LOSS SUMMARY**  
 prepared for  
**CWA Broadcasting, Inc.**  
 WINX-FM Ch. 232B1 Cambridge, MD Facility No. 14774

**1 mV/m Contour Land Area and Population**

	<i>Area</i>	<i>Land Area</i>	<i>Pop</i>	<i>Percent</i>
<i>Loss Area</i>	<i>(sq km)</i>	<i>(sq km)</i>	<i>(persons)</i>	<i>(%)</i>
5 or more	351	344	9,729	95.7
4 Svcs	41	34	439	4.3
Total	392	378	10,168	100.0
<i>Gain Area</i>				
5 or more	1,244	674	52,015	47.6
4 Svcs	642	284	47,782	43.7
3 Svcs	283	108	3,915	3.6
2 Svcs	283	89	4,536	4.1
1 Svc	276	70	1,106	1.0
Total	2,728	1,225	109,354	100.0
<i>Net Gain</i>	2,336	847	99,186	
<i>Net Underserved</i>	1,441	517	56,900	

Table II  
**OTHER PROPOSALS GAIN SUMMARY**  
 prepared for  
**CWA Broadcasting, Inc.**  
 WINX-FM Ch. 232B1 Cambridge, MD Facility No. 14774

**Gain / Loss for *Chincoteague* as Class A**  
**Ch. 233A**

	<i>Land Area</i> (sq km)	<i>Pop</i> (persons)
<b><i>Gain Area</i></b>		
5 or more	936	28,901
4 Svcs	123	2,440
Total	1,059	31,341
<b><i>Gain</i></b>	1,059	31,341
<b><i>Underserved</i></b>	123	2,440

**Gain / Loss for *Newark* as Class A**  
**Ch. 233A**

	<i>Land Area</i> (sq km)	<i>Pop</i> (persons)
<b><i>Gain Area</i></b>		
5 or more	1,842	92,396
4 Svcs	4	0
Total	1,846	92,396
<b><i>Gain</i></b>	1,846	92,396
<b><i>Underserved</i></b>	4	0

**Gain / Loss for *Stockton* as Class A**  
**Ch. 232A**

	<i>Land Area</i> (sq km)	<i>Pop</i> (persons)
<b><i>Gain Area</i></b>		
5 or more	1,523	33,016
4 Svcs	50	483
Total	1,573	33,499
<b><i>Gain</i></b>	1,573	33,499
<b><i>Underserved</i></b>	50	483

CERTIFICATE OF SERVICE

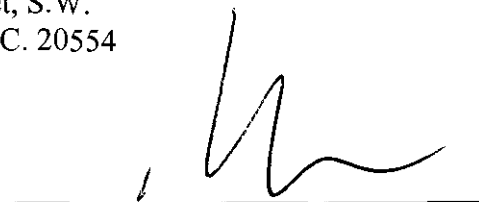
I, Barry A. Friedman, do hereby certify that I have, on this 27<sup>th</sup> day of December, 2004, served a copy of the foregoing "Reply Comments" on the following parties by first-class mail, postage prepaid:

Dana J. Puopolo  
Unit C  
2134 Oak Street  
Santa Monica, California 90405

Andrew S. Kersting, Esq.  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, D.C. 20037

Cary S. Tepper, Esq.  
Booth, Freret, Imlay & Tepper, P.C.  
7900 Wisconsin Avenue  
Suite 304  
Bethesda, Maryland 20814

R. Barthen Gorman, Esq. \*  
Audio Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to be "B. Friedman", is written over a horizontal line.

\* By Hand